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No. 510

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

JOHN SYRES, LOUIS J. WARRICK AND LOCAL 254, OIL WORKERS INTERNATIONAL UNION, C. I. O.,
Petitioners

v.

OIL WORKERS INTERNATIONAL UNION, LOCAL #23, F. A. McDUFFIE, CHAIRMAN GULF MAIN PLANT GROUP AND GULF OIL CORPORATION, E. R. McADAMS, CHAIRMAN GULF WORKMEN'S COMMITTEE,
Respondents

PETITION FOR A WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Fifth Circuit

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Petitioners, John Syres and Louis J. Warrick, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled cause on July 18, 1958.

Citations to Opinions Below

The Judgment of the United States District Court for the Southern District of Texas is unreported and is printed in the accompanying record certified by the Clerk of the United States Court of Appeals, Fifth Circuit (R. p. 889). The opinion of the Circuit Court of Appeals is in the certified copy of the Record, p. 903, has not yet been officially reported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 18, 1958 (R. 913). Rehearing was denied on August 29, 1958 (R. 926). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

Questions Presented

Whether damages may be recovered by a class, in a class action where the complaint seeks no individual recovery and where the evidence on trial seeks to prove no individual loss but loss to the Class?

Whether individual damages must be proved, by individual members of a class, in an action that alleges the negotiation by defendants of a racially discriminatory contract aimed at limiting the employment rights of a class, to-wit—Negro employees?

Statutes Involved

The statutory provisions involved are: The National Labor Relations Act, 29 U.S.C. 151, et seq.; 28 U.S.C. 1331, and Rule 23a(1), Federal Rules of Civil Procedure. These provisions are printed in Appendix A.

Statement

This is the second occasion that this case has been before this Court on petition for writ of Certiorari, the first occasion presenting the question of the jurisdiction of Federal District Courts to hear an action in which union members charge their exclusive collective bargaining representative with breach of the statutory duty imposed by the National Labor Relations Act to represent fairly and without racial discrimination. That issue was resolved in favor of these petitioners, *Syres v. Oil Workers International Union*, 76 S.Ct. 152, who are present petitioners and the cause was remanded to the District Court for a trial on the merits. That cause came on to be heard before a jury in the United States District Court for the Eastern District of Texas. Before, however, the cause was tried, the contract sued upon having expired and a new contract negotiated, on motion of respondent Gulf Oil Corporation, the action was dismissed by the District Court for mootness except insofar as the case asked for relief by way of damages. At the trial the petitioners offered no proof as to loss of wages by any individual employee whom they represent, but the proof was limited to showing that the action of respondents in negotiating the contract of April 17, 1954 damaged the class, qua class, by limiting their promotability for the term of the contract. Petitioners calculated their damages based on such factors as the incidence of recurring vacancies in the Operating-Mechanical Division to which they could not promote, the incidence of employees within the Labor Division who showed a desirability to promote, the weekly working hours and the differential between the Labor Division salary and the average Operating-Mechanical Division salary. The petitioners' theory advanced the idea that

the damages belonged to the class not to the individual members of the class, since the action complained of was directed at the class. The trial court rejected this theory of damages and instead submitted the cause to the jury upon instructions that they could only find for Plaintiffs if they found that some individual member of the class had come forward with proof of damages as to himself. The jury returned a general verdict for respondents on which judgment was entered. An appeal was taken to the Fifth Circuit of the United States Court of Appeals which affirmed the judgment of the trial court. A voluntary non-suit was taken as to the defendant Local 254 before judgment. The basis for federal jurisdiction in the District Court is based on Title 28 *U.S.C.*, Section 1331, this being a cause arising under the Constitution and laws of the United States.

Reasons for Granting the Writ

1. The question presented by the instant case is important because it involves the administration of the National Labor Relations Act, and a determination by the Supreme Court of whether the Plaintiffs may recover damages on behalf of the class whom they represent will have far reaching effect upon a large segment of labor that may be likewise encumbered by a similar contract. This important question has not been, but should be, settled by this Court. There are no cases which have come before this court or any other Federal Court which have raised this question or any question substantially similar. It is therefore important that the question be determined as to whether a person who, though entitled to injunctive relief as a member of a class, before he may get damages for a breach of statutory duty, must prove some actual loss of wages as to himself.

This theory may be adequate in other cases, but it does not suffice in the case at bar. Fact situations such as the one at bar are likely to frequently recur; for it is not untoward that the discriminatory contract stifles potential promotability, which cannot be measured in terms of loss of something once possessed rather than causing a loss of jobs presently held, the value of which can be exactly admeasured at an hourly rate. Hence, the importance of the question here is directly proportionate to the incidence of discriminatory contracts of the sort in question affecting a large section of the labor population. This case would therefore settle a principle for which there seems to be a dearth of authority.

The trial court and Circuit Court of Appeals adhered to the following rule which is a quotation from the decision of the latter court:

> "Damages may sometimes be recovered in a class action, but where the damages if recovered would be in different individual amounts to different individuals the persons entitled thereto must be made parties . . ."

The rules presuppose recovery by different persons of different amounts. The important question is whether in a case such as this persons may combine themselves together alleging joint injury and not claim different amounts. The rule of the two lower courts would seem to hold the Plaintiffs to a rule of damages that they neither alleged nor proved. This important question of federal law should be settled by this Court.

In *Long v. Dravo Corporation*, 6 F.R.D. 226, it was held that in an action by employees to recover vacation

pay under a collective bargaining agreement, alleged to be Forty Dollars ($40.00) per employee, that such an action could not be maintained as a "True Class Suit". This case clearly demonstrates that the test for determining the type of class action is revealed from the species of recovery to which Plaintiffs allege themselves entitled. It is also clear from this that this case brings into question for settlement by this court the question of federal law whether Rule 23 of the Federal Rules of Civil Procedure, providing for the true class action, is applicable in cases where the pleading and proof are as in the case at bar.

2. The court below has decided a federal question in a way which is in conflict with a decision of another court of appeals on the same matter. The court of appeals has decided that Rule 23, *Federal Rules of Civil Procedure* is not applicable in a class action to redress breach of the statutory duty imposed by the National Labor Relations Act. This decision is in direct conflict with a holding on the same issue in *Tunstall v. Brotherhood of Locomotive F & E*, (CCA). 148 F. 2d 403. In the *Tunstall* Case it is said:

> "Subsection a(1) of Rule (23) provides for class action where the character of the right sought to be enforced for or against the class is joint or common and the persons constituting the class are so numerous as to make it impracticable to bring them all before the court, the typical case of suit *by or* against *an unincorporated association*. Professor Moore in Federal Practice, Vol. 2, p. 2235 et seq. cites suits against unincorporated association as typical of what he calls the "True Class Suit" under the rule . . ."

True it is that in this action the "Association, Local 254 (now 4-254) has been dismissed as a party plaintiff, but that would seem to make little difference where, as here, the class represented is to some extent tantamount to the "association".

Argument

The holding of the court below establishes the two following rules or the two variants of the same rule:

(1) that damages may be recovered in a class action, the "true class suit", as where the recovery sought is joint, without joining all the members of the class as parties; and (2) that damages may not be recovered in the "spurious class suit" unless all the members of the class intervene as parties. The question arises with regard to the situations under which either of the rules would be applicable. That is, what will determine whether damages may be awarded a class in the absence of joinder of members of the class as parties? This then is essentially the question: what in the case at bar determines whether damages may or may not be recoverable by the class. It would seem to follow that the determination is to be made from an examination of pleadings and proof to determine what the parties are seeking. That is, are the damages sought several or joint? This can be determined only from an analysis of the manner in which Plaintiffs cast their case.

In the case at bar is it quite evident from both pleading and proof of Plaintiffs show no recovery sought independently on behalf of separate individuals, but rather the recovery sought is for the class, for an injury which has been done to the class, i.e., Negro employees and not to individuals. *Shain v. Armour & Co.*, 40 F. Supp., 488.

The necessity for such a rule as contended for by plaintiffs in this type of case is evident from the fact that no other measure of damage is possible. There has been an injury. No other measure of damages is possible because in truth wages, and promotions—which this honorable court designated as individually owned rights—are involved in suits such as this only in a metaphysical sense, and as such belong, conceptually, to a class of employees. It would therefore, be possible for any individual employee to prove loss of wages, for this would contemplate that there was something once possessed, or that because of conduct in the past, for the future period such could be anticipated. No such analysis can be applied to the facts in this case. No individual employee had wages cut off which he was earning in the Operating Mechanical Division of Gulf. As to the anticipation of wages, all employees share such anticipation, there is nothing distinct or different in this from man to man. The denial of the right to promote being inseparable with wages, all that has been said about wages applies with equal force to promotions. So the injury that has been done has been directed toward a particular class of employees, qua class, that cannot be denied, and the damages resulting have resulted to the class, qua class, in the form of loss of opportunities and anticipated progress up the economic scale. As plaintiffs' witness, Jacobs testified, he was hurt by the contract in suit "on the idea of potention that was involved." (R. 388). This, it cannot be denied, was exactly the same as to everyone in the class. Hence, the fact that John Syres did not bid for any job in the Operating Mechanical Division during the term of the contract of 1954 is an index to nothing. Would the court require plaintiffs to perform the

futile gesture of vain bidding? Nor can the situation in the case at bar likened to the situation where persons must attempt to use a facility before maintaining an action to prevent its segregated use.

Most of the cases cited by the court as supporting its general proposition that damages could not be recovered in a class action where the amounts recoverable by the different individuals would be different, are actions for damages under the Anti-Trust Laws wherein each Plaintiff was to recover lost profits. *Alabama Independent Service Station Association v. Shell Petroleum Corp.*, 28 F. Supp. 386; *Weeks v. Bareco Oil Co.*, 125 F. 2d 84; *Farmers Co-Op. Co. v. Socony-Vacuum Oil Co.*, 133 F. 2d 101; *Kainz v. Anheuser-Busch, Inc.*, 194 F. 2d 737. The case of *Citizen's Banking Co. v. Monticello State Bank*, 143 F. 2d 261, cited by the court in its opinion allowed a class action to be maintained, the court saying that the purpose of the action was to protect a particular trust fund in which none of the class has a particular interest, but in which there is only the pro-rata right of participation. This announces the principle which petitioner's urge upon this Court. No particular employee is seeking a particular recovery, but in whatever recovery there may be there will be a ratable participation.

Conclusion

For the foregoing reasons, this petition for a writ of ceriorari should be granted.

Respectfully submitted,

ROBERSON L. KING
Counsel for Petitioners

APPENDIX A

28 U.S.C. 1254. COURTS OF APPEALS—CERTIORARI—APPEAL—CERTIFIED QUESTIONS.—Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. 1331. FEDERAL QUESTION—AMOUNT IN CONTROVERSY.—The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

§ 159. REPRESENTATIVES AND ELECTIONS—EXCLUSIVE REPRESENTATIVES; EMPLOYEES' ADJUSTMENT OF GRIEVANCES DIRECTLY WITH EMPLOYER.

(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

RULE 23

Class Actions

(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it.

CERTIFICATE OF SERVICE

Copies of this Brief have been previously delivered to Counsel for Respondents.

ROBERSON L. KING

APPENDIX B

IN THE

UNITED STATES COURT OF APPPEALS

FOR THE FIFTH CIRCUIT

No. 16539

JOHN SYRES and LOUIS J. WARRICK, Appellants,

versus

OIL WORKERS INTERNATIONAL UNION, LOCAL 23, ET AL., Appellees

Appeal from the United States District Court for the Eastern District of Texas

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(July 18, 1958)

Before HUTCHESON, Chief Judge, and RIVES and CAMERON, Circuit Judges.

RIVES, Circuit Judge: Local 254 of the Oil Workers International Union[1] and John Syres and Louis J. Warrick, individually and as representing a class similarly

[1] Now Local 4-254, Oil, Chemical and Atomic Workers International Union.

situated, filed this action in May 1954 against Oil Workers International Union, Local 23,[2] certain of its officers, as individuals and as representing members of a class, and the Gulf Oil Corporation. The complaint alleged that the collective bargaining agreement of April 17, 1954, with Gulf as employer, divided the jobs between the races and discriminated against Negroes. The complaint further charged that all of the defendants had conspired to deprive plaintiffs and other Negroes represented by them of their rights guaranteed under the National Labor Relations Act and under the Constitution of the United States. The district court at first dismissed the action for lack of jurisdiction, and this Court affirmed, the present writer dissenting. *Syres v. Oil Workers International Union, Local 23*, 5th Cir. 1955, 223 F. 2d 739. The Supreme Court, in a brief per curiam, 350 U.S. 892, granted certiorari, reversed the judgment of this Court, and remanded the case to the district court for further proceedings, citing: *Steele v. L. & N. R. Co.* 323 U.S. 192; *Tunstall v. Brotherhood*, 323 U.S. 210; *Railroad Trainmen v. Howard*, 343 U.S. 768.

The collective bargaining agreement of April 17, 1954, claimed to be discriminatory was of eighteen months' duration. On March 14, 1956, a new labor contract covering the same employees was executed. This case was not reached for trial until October 1, 1956, about six months after the execution of the 1956 contract. The plaintiffs did not attack that contract as discriminatory or other-

[2] Now Local 4-23, Oil, Chemical and Atomic Workers International Union.

wise illegal, and, indeed, made no reference to it, but went to trial upon their original complaint. The defendant Gulf Oil Corporation moved to dismiss the action because it had become moot, and the district court sustained that motion "to the extent that all causes of action and claims for relief contained in Plaintiffs' said complaint save and except those relating to Plaintiffs' claim for monetary damages be and the same are hereby dismissed." The appellants do not complain of that ruling.

As a suit for damages, the case was tried before a jury. At the conclusion of the evidence, Local 254 withdrew as a party plaintiff. The district court submitted the case to the jury on behalf of the two individual plaintiffs and the class which they represent. The jury returned its verdict in favor of the defendants, on which judgment was entered. From that judgment the plaintiffs Syres and Warrick appeal, specifying as errors certain rulings upon the evidence and in the court's instructions to the jury, among others that the court erred "in its manner of instructing the jury in the question of damages."

Each of the defendants had moved for a directed verdict on the ground that there was no competent evidence of damage suffered by any plaintiff or by any member of the class, and that the evidence was insufficient to warrant the submission of any damages on behalf of any person. On such motions, the district court reserved its decision under Rule 50(b), Federal Rules of Civil Procedure. During the absence of the jury, however, the district court clearly indicated to counsel its opinion that the defendants

were entitled to a directed verdict because no damages had been proved.[3]

In addition to relief by way of injunction, now moot, the complaint had contained a general prayer for damages: "Plaintiffs further pray that this Court award them judgment for damages in the amount of one hundred fifty thousand dollars ($150,000.00)."

The theory upon which the plaintiffs undertook to establish their claim for damages is thus described in one of their requested but refused instructions:

> "The amount, of money, if any, to which the plaintiffs, Syres, Warrick, and those whom the named plaintiffs represent are entitled to is the difference between the average wage in the Operating Mechanical Division and that of the Labor Division, said average being the total of all salary items in either division, divided by the number of salary items in either division, times forty (40) (hour work week), times the number of weeks the contract of April 17, 1954, was in force, multiplied by the number of men that would have received such vacancies but for the contract of April 17, 1954."

[3] "The Court: The Court has indicated in conference with counsel for all parties since the close of the evidence in this case, the Court if of the fixed opinion that your objections to the Charge on damages insofar as it points out that there is no evidence in this record to which the jury could calculate the damages is well taken.

"Mr. Keith: Well, I understand.

"The Court: And that is why the Court has thought all along you were entitled to an instructed verdict in this case, but since the Court is going to submit the case to the Jury, I will overrule your objection and the objections of the remaining Defendants and the objections from the Plaintiffs. Mr. Marshall, tell the jury to go to the jury room and start its deliberations."

Testifying in support of that theory, Syres calculated the recoverable damages to be $1,000,580.80.[4] On cross-

[4] "Q. And could you determine—and this is on the question of how you have estimated the damages that you have asked for in this suit, how have you estimated the damages with regard to the vacancies that have occurred?
"A. Well, I worked it out according to the division and I take a figure that any operating mechanical division that the total salaries divided by the hours run into $94.92. And, divide it by the number of salary items that we have accumulated within the provision would be $41.00 which would give an average of $2.32, an average in the operating mechanical division per hour.
"Q. Now, let me stop you there, you say that the average wage per hour in the operating mechanical division is what?
"A. $2.32.
"Q. $2.32?
"A. And in the labor division, the average would be a $1.56. Average hourly wages.
"Q. All right. Now, that would give you a difference of what as between the average salary of the two?
"A. That would give me a difference of $.76.
"Q. Difference of $.76?
"A. And I figured also that the number of hours worked per week at $.76 per hour will give me $30.40 a week.
"Q. What does that represent, the $30.40?
"A. Well, that give me a difference in the rate between the operating mechanical division and the labor division provided my men had accepted this position and gotten a promotion.
* * * * * *
"Q. Go ahead?
"A. On the average of thirty dollars and forty cents per week, that is, for the two year period which is one hundred and four weeks, I figure it was $3,161.60.
"Q. Now, is that the figure per man?
"A. That is the figure per man.
"Q. Would that be a figure or at least would that be the total figure each man would have lost in operating mechanical division by not having been able to avail themselves of the opportunity of having worked?
"A. That is correct.
"Q. And how many men have you said wished to avail themselves of that opportunity?
"A. Well, I am thinking that the amount of seniority that my men would have had if the five hundred of them would have been eligible for these promotions if they had had an opportunity and

examination Syres expressed his hope that, in some manner not provided in the judgment sought, any recovery might be distributed through the local union.[5]

I multiplied five hundred times the $3,161.60 and I found the figure of one million, five hundred and eighty dollars and eighty cents, that is the total.
"Q. That is—that would be sufficient damages in this case which—
"A. (Interrupting) That is correct.
"Q. Which each man would have suffered?
"A. That is correct.
"Q. As an individual or total?
"A. That is right.
"The Court: That is just about ten times as much as you sued for.
"Mr. King:
"Q. Can you give some explanation why the difference between the amount that you originally calculated, could you say?
"A. You mean in the suit?
"Q. Yes?
"A. Well, first of all, we had no idea that it would run for this period of time, you see. We was thinking that it will be over in two or three months and we felt like we were justified in asking for a hundred and fifty thousand dollars."

[5] "Q. Well, now, who is going to get this money, John?
"A. Well, the local union if we get any.
"Q. You mean this million five hundred eighty thousand eight hundred dollars or you mean the $150,000? Who is going to get either or both?
"A. Well, the local union will get it.
"Q. And you are what in that local union?
"A. I am Secretary-Treasurer.
"Q. Well, who handles the money?
"A. I handle the money.
"Q. You handle the money?
"A. That is right.
"Q. Well, now, you are not going to give it to the members, if you get all of that money, you are not going to give it to the members?
"A. Well, that is going to be up to the members. If they want it, why, certainly.
"Q. But you are going to collect it yourself?
"A. If there is any I would like to collect it."
* * * * * *

The district court charged the jury that in the event of a verdict for the plaintiffs the damages should be determined on the basis of the actual pecuniary loss suffered by the individual plaintiffs or by those whom they represent.[6] To that charge, the plaintiffs objected on the ground

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"Q. But you are going to collect it and still you say that you are going to collect it for the benefit of the union or for the benefit of your members?
"A. Well, the members of the union, the funds are all allocated. That is how it is distributed.
"Q. Yes. And if those, now, those members are individuals, aren't they?
"A. Yes.
"Q. And if any money comes in there it comes in for their benefit?
"A. Yes."

[6] "Now, in the event your verdict is to be for the Plaintiffs, you should then consider the amount of damages, if any, which the Plaintiffs are entitled to recover herein. If your verdict is for the Defendants you need not consider the question of damage or the cause any further. If you find and believe from a preponderance of the evidence that the Plaintiffs, John Syres, Louis J. Warrick, and those whom they represent of either of them sustained actual pecuniary loss proximately caused by the wrongful acts of the Defendants, if you find the Defendants guilty of such wrongful act, you should find and declare the sum of money, if any you find from a preponderance of the evidence that would fairly and reasonably compensate them or either of them and each of them by such loss, if any, they have suffered.

"Now, in considering this matter, you should consider the following items and none other; first, the existence of vacancies to which the Plaintiffs or any of them and those whom they represent were refused promotion solely because of race. Two: the existence of vacancies to which the Plaintiffs or any of those whom they represent would have been entitled to but for the contract of April 17, 1954; and, the actual amount of money that the Plaintiffs or any of them whom they represent lost by reason of being deprived of those jobs solely because of their race.

"Now, to illustrate what the Court has last stated, I give you this example not meaning to convey to the jury that the Court believes from the evidence in this case any such situation exists, but solely for the purpose of illustration. Suppose one John Jones, we will say, a negro member of 254 and an employee of the Gulf Oil Corporation refinery in question desired to bid on a job in the

"that the proof was to be according to each individual man rather than as computed on an average basis."

Syres admitted that he did not bid for any job in the Operating-Mechanical Division, and that he had no knowledge of Warrick having done so. Warrick did not testify. There was a total absence of proof that any particular individual had suffered any damages by reason of the alleged discriminatory provisions of the 1954 contract.

Wages are, of course, separately and individually earned. Promotions and failures to promote are peculiar to the individual employee. There was no claim nor evidence that any of such individually-owned rights had been transferred either to the local union or to the plaintiffs. No law has been cited, and we have been unable to find any which would permit the plaintiffs to maintain this action for damages vicariously or to recover on some theory of averages. When, if the proper parties were before it, the court could award equal and exact justice, why should it

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operational mechanical department and a vacancy in the operational and mechanical department occurred and John Jones, did, in fact, bid on that job and but for his race and the April, 1954, contract, he would have gotten that job. Then, to determine the amount of damages that John Jones sustained by reason of not getting that job on account of his race, you would determine from the evidence the difference between the wage he was being paid in the labor division and the wage he would have been paid in the operational mechanical division had he been given the job for the remainder of the term of the April, 1954, contract existing from the date he would have gotten that job and the expiration date of that contract. That would be the amount of damages that John Jones would be entitled to recover under such circumstances. And, of course, a similar statement with reference to the other negro employees of Gulf Oil Corporation in the same position, of course, would apply.

"And you verdict if to be for the Plaintiffs and you do find the Plaintiffs or those whom they represent have suffered damages will be for the Plaintiffs in the aggregate amount of the damages you find that the Plaintiffs or those whom they represent have sustained."

be required to render some rough or approximate judgment, rusticum judicium?

It is not enough to say that the right not to be discriminated against on account of race is joint or common and that a class action is maintainable under Rule 23 (a), Federal Rules of Civil Procedure. Granted arguendo, it nonetheless remains true that in such an action the class can obtain only that relief to which it is entitled. For example, here, the enforcement of the alleged discriminatory contract might have been enjoined if it had not expired and been replaced by one to which there was no objection. All that would be settled in such a class action is that Negroes as a class may not be excluded from jobs or promotion lists, may not be discriminated against because of their race or color. The necessary qualifications to hold any job or to merit any promotion are personal. A familiar analogy is supplied in school segregation cases, where, color aside, each individual must have the necessary qualifications to enter any particular school or college, and that is a matter which cannot be decided in the absence of the individual as a party.

> " * * * The representatives of the University seem to be apprehensive that a judgment in favor of all Negroes in North Carolina who may apply for admission to the University may deprive the Board of Trustees of their power to pass upon the qualifications of the applicants. Such is not the case. The action in this instance is within the provisions of Rule 23 (a) of the Federal Rules of Civil Procedure because the attitude of the University affects the rights of all Negro citizens of the State who are qualified for admission to the undergraduate schools. But we decide only that the Negroes as a class may not be excluded be-